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No. 87-394

In the Supreme Court of the United States

OCTOBER TERM, 1987

DAVID J. CATANESE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General

WILLIAM F. WELD
Assistant Attorney General

MAURY S. EPNER
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether petitioner has standing to contend that DEA agents lacked probable cause to believe that certain United States currency in the possession of a third party was "intended to be furnished by any person in exchange for a controlled substance" (21 U.S.C. 881(a)(6)) and therefore could not be seized in accordance with 21 U.S.C. (Supp. III) 881(b)(4).

2. Whether, if petitioner does have standing, the seizure of the currency satisfied the Fourth and Fifth Amendments.

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OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. 17a-18a) is unreported. The opinion of the district court (Pet. App. 1a-15a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 13, 1987. A petition for rehearing was denied on May 18, 1987 (Pet. App. 19a-20a). The petition for a writ of certiorari was filed on August 17, 1987 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following the seizure of $113,800 in United States currency pursuant to 21 U.S.C. (Supp. III) 881(b)(4), the government instituted a proceeding under 21 U.S.C. 881(d) to forfeit the currency. The United States District

Court for the Western District of Pennsylvania granted the government's motion for summary judgment and ordered the forfeiture.

1. The relevant facts are summarized in the opinion of the district court (Pet. App. 2a-10a). On April 8, 1985, the Pittsburgh branch office of the Drug Enforcement Administration (DEA) learned from a law enforcement official in Florida that Anthony Frank Feliziani had boarded a flight from Ft. Lauderdale to Pittsburgh. When Feliziani's baggage passed through an x-ray machine at the Ft. Lauderdale airport, security personnel saw a number of large stacks of currency in Feliziani's briefcase. Pet. App. 2a-3a. Security personnel in Ft. Lauderdale questioned Feliziani, who they estimated to be in his early 20's, about the currency. He admitted carrying the currency and acted very nervous and flustered during the questioning (C.A. App. 18a).

Two DEA agents were dispatched to the Greater Pittsburgh International Airport to meet the plane on which Feliziani was a passenger. The agents saw Feliziani arrive at the Pittsburgh airport carrying a brown briefcase and a black shoulder bag. Feliziani went directly from the passenger arrival area to a public telephone. After making a call that lasted approximately two minutes, Feliziani walked to another passenger gate. At that point the DEA agents approached Feliziani, identified themselves as DEA agents, stated that they were conducting a narcotics investigation, and told Feliziani that they believed he was carrying cocaine from Florida. Feliziani replied that he had obtained $114,000 in Florida for a friend and that he was en route to Chester, Pennsylvania, to deliver the money to his friend. Pet. App. 3a-4a.

The agents escorted Feliziani to the airport police station. After Feliziani was advised of his constitutional rights, he consented to a search of his person and his luggage. The agents found no drugs, but they did find $113,800 in United States currency in the bag. Feliziani said the currency belonged to petitioner. Pet. App. 4a.

Feliziani said that petitioner had asked him to pick up the currency as a favor while Feliziani was on vacation in Florida. In the course of their search, the agents also found airline tickets in the name of T. Iacona. Feliziani said that petitioner had given him the airplane tickets to use in making the trip. He added that he did not expect any other compensation from petitioner for the "favor" he was doing. Pet. App. 4a-5a.

Feliziani recounted that petitioner had instructed that upon his arrival in Florida, he was to rent a room at the King Neptune Hotel in Fort Lauderdale and wait for someone named "Pam" to deliver a briefcase containing money. Feliziani followed those instructions, he was contacted by "Pam," and the two of them counted and transferred the money into the brown briefcase that petitioner had supplied. Pet. App. 5a.

Feliziani also told the agents that when he arrived at the Pittsburgh airport on his return trip he notified petitioner that he expected to reach Philadelphia later that day. He also told petitioner that he had been stopped at the Fort Lauderdale airport and questioned about the money in the briefcase. Pet. App. 5a-6a.

Feliziani stated that he knew nothing more about the money or about "Pam," and that only petitioner could explain the source of the $113,800. Feliziani then gave the agents a telephone number at which petitioner could be reached. One of the DEA agents used that number to call petitioner. In that conversation, which was recorded, petitioner identified himself as a professional musician and said that he had given $114,000 in cash to Feliziani in a brown briefcase. Petitioner added that the money belonged to a group of five investors, including himself, and that it was intended as a down payment on the purchase of the King Neptune Hotel. Petitioner said that only $15,000 of the money belonged to him, but he refused to name the other four investors. Pet. App. 6a-7a.

While one DEA agent was speaking to petitioner, the other agent granted Feliziani's request to call a lawyer. After returning from the public telephone, Feliziani volunteered that the money in his briefcase was to be used to purchase a bar and restaurant for petitioner, and that petitioner trusted him to make a sound business decision despite his lack of experience in real estate or in financial matters. At about the same time that Feliziani was making that statement to one DEA agent, petitioner, who was still talking on the telephone with the other agent, acknowledged that Feliziani had just called him and had told him that he was being detained at the Pittsburgh airport. When confronted with that information, Feliziani admitted that he had not called a lawyer, but had called petitioner. Feliziani was then released. The agents retained custody of the briefcase and the $113,800. Pet. App. 7a-8a.

The following day, DEA agents learned from the manager of the King Neptune Hotel that the hotel was for sale through the National Realty Company of Atlanta, Georgia, and that someone other than petitioner was negotiating to purchase the property. The manager also confirmed that Feliziani had been registered at the hotel and that Pam Proudfoot (also known as Pam Gambino) was registered at the hotel in the room that Feliziani had told the DEA agents that she occupied. Later that same day a DEA agent was informed by the owner of the King Neptune Hotel that she had never negotiated for any kind of sale with either petitioner or Feliziani. Pet. App. 8a-9a.

The FBI office in Philadelphia subsequently reported that a reliable confidential informant had seen petitioner in possession of kilogram quantities of cocaine, that petitioner was a major distributor of cocaine and methamphetamine in eastern Pennsylvania, and that Feliziani was a member of petitioner's organization. Those allegations were corroborated by other confidential sources. The DEA office in Wilmington, Delaware, indicated that it

was also investigating petitioner for cocaine and methamphetamine distribution in Delaware. Pet. App. 9a-10a.

2. On the basis of those facts, the district court granted the government's motion for summary judgment. The court observed that in a forfeiture action under 21 U.S.C. 881(d), the government bears the threshold burden of establishing probable cause to believe that the property in question has been involved in a violation of federal narcotics laws (Pet. App. 13a). The government met its burden here, the district court concluded, because Feliziani's presence in Florida and Pittsburgh was suspicious; he was carrying an extraordinary quantity of cash; his story to the authorities contradicted petitioner's; petitioner's story was inconsistent with information provided by the owner and the manager of the Neptune Hotel; and reliable informants disclosed that Feliziani and petitioner were involved in narcotics trafficking (*id.* at 14a-15a). When petitioner failed even to attempt to rebut the government's prima facie showing of probable cause, the district court granted the government's motion for summary judgment (*id.* at 15a).

ARGUMENT

1. Petitioner asserts (Pet. 12-19) that the DEA agents who seized Feliziani's bag containing $113,800 in United States currency lacked probable cause to seize the currency. Petitioner, however, lacks standing both to contest the forfeiture and to challenge the seizure.

A party seeking to contest the government's forfeiture of money or property used in violation of federal law "must first demonstrate an interest in the seized item sufficient to satisfy the court of its standing to contest the forfeiture." *United States* v. *$364,960 in United States Currency*, 661 F.2d 319, 326 (5th Cir. 1981). See *United States* v. *$15,500*, 558 F.2d 1359, 1361 (9th Cir. 1977). The burden of establishing one's standing, moreover, rests

upon the claimant (*United States* v. *$364,960 in United States Currency*, 661 F.2d at 326). Here, the currency was seized not from petitioner but from Feliziani, and petitioner refused to acknowledge in response to government interrogatories that the currency belonged to him (see Pet. App. 12a). Petitioner accordingly has failed to demonstrate his standing to challenge the forfeiture.

In addition, even if petitioner had claimed ownership of the currency and thus had standing to contest the forfeiture, he would not have standing to raise a Fourth Amendment objection to the detention and questioning of Feliziani at the Pittsburgh airport, which is the thrust of his challenge to the seizure of the currency. Petitioner cannot plausibly contend that all of the evidence gathered by the agents during the period after Feliziani was detained—including the evidence that petitioner's story about the currency was a falsification and the evidence that petitioner and Feliziani were involved in drug dealing—did not constitute probable cause to justify the forfeiture. Instead, he argues that at the time Feliziani was detained, the agents did not have sufficient cause to justify detaining him. As to the brief detention of Feliziani at the Pittsburgh airport, however, only Feliziani can complain, because only Feliziani's Fourth Amendment rights were at issue. When Feliziani subsequently consented to the search of his bags and voluntarily answered the agents' questions, the agents quickly developed probable cause to justify the seizure of the currency under 21 U.S.C. (Supp. III) 881(b)(4). Because Feliziani had been given custody of the currency for that period, petitioner did not have a custodial interest in the currency that was infringed by the temporary detention and questioning of Feliziani. Before any interest of petitioner's was implicated, the agents had plainly acquired probable cause for the seizure.

Finally, even if petitioner had standing to contest both the forfeiture and the seizure, his contention would have

no merit. Before the DEA agents encountered Feliziani in Pittsburgh, they already knew that he had traveled from Fort Lauderdale, a known source city for narcotics (see *United States* v. *$84,000 United States Currency*, 717 F.2d 1090, 1092 (7th Cir. 1983), cert. denied, 469 U.S. 836 (1984)) and that he was a very young man carrying an unusually large sum of cash. Those facts, plus the nervousness that Feliziani exhibited upon being questioned about the currency in Ft. Lauderdale gave the agents in Pittsburgh a reasonable basis for a brief investigative stop. After encountering the agents and being advised of his constitutional rights, Feliziani consented to a search of his bag, in which the agents discovered the currency. Feliziani explained the money in a way that was inconsistent with statements offered by petitioner, and he acknowledged traveling under an alias. In addition, although both Feliziani and petitioner ultimately claimed that the trip to Florida was a vacation that included, as a favor, an agreement to negotiate a real estate transaction for petitioner, the agents learned that Feliziani spent just two days in Florida and had no real estate or financial experience. Under all these circumstances, the agents had probable cause to believe the currency had been intended for use "in exchange for a controlled substance" (21 U.S.C. 881(a)(6)).

Petitioner nevertheless contends (Pet. 13), without elaboration, that the decision below conflicts with the "rationale" of this Court's decisions in *Arizona* v. *Hicks*, No. 85-1027 (Mar. 3, 1987), and *United States* v. *Place*, 462 U.S. 696 (1983). *Place* involved a defendant in a criminal prosecution who, after being stopped in an airport, refused to consent to a search of his luggage. His luggage was then improperly detained without sufficient legal justification. *Hicks* involved the question whether an officer who looked underneath stereo equipment was thereby conducting an unauthorized "search." Here, by contrast, the lawfulness of the search of the bag is not

seriously at issue. Feliziani consented to the search of his bag, and by the time they had completed the search and the questioning of Feliziani and petitioner, the agents had sufficient justification to retain the currency pending possible forfeiture proceedings.[1]

2. Petitioner also claims (Pet. 19-23) that the procedures governing the filing of forfeiture petitions by the government are unconstitutional. He contends that the procedure set forth in Rule C, Supplemental Rules for Certain Admiralty and Maritime Claims, violate the Fourth and Fifth Amendments because it authorizes a seizure of property without probable cause. In this case, however, the government instituted the forfeiture proceedings by seizing the currency pursuant to the alternative procedure set forth in 21 U.S.C. (Supp. III) 881(b)(4), which requires probable cause to justify the seizure. The

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[1] There is likewise no merit to petitioner's claim (Pet. 13-14) that the decision below conflicts with *United States* v. *Kemp*, 690 F.2d 397 (4th Cir. 1982), or *United States* v. *$38,600 in United States Currency*, 784 F.2d 694 (5th Cir. 1986). In *Kemp*, as here, both the district court and the court of appeals concluded that the property in question was involved in a violation of narcotics laws. See 690 F.2d at 401. In *United States* v. *$38,600, supra,* the court of appeals held that the government failed to establish probable cause for the forfeiture of $38,600 in currency. The evidence at trial in that case showed that the cash was found beneath a car seat near a pipe containing marijuana residue, and the claimants failed to explain truthfully why they were traveling with the money. The instant case is readily distinguishable, however, because in this case undisputed evidence presented with the government's summary judgment motion showed that Feliziani traveled under an alias, from a known source city for narcotics, and offered an explanation for his conduct that was not only highly improbable, but also failed to accord with petitioner's explanation. In addition—a factor that was significantly absent in *$38,600*—reliable informant information linked both petitioner and Feliziani to drug dealing. The court in *$38,600* made it clear that if there had been any such evidence in that case, the forfeiture would have been upheld. See 784 F.2d at 698.

government then commenced a forfeiture action under 28 U.S.C. 881(d). The government did not at any point rely on the authority of Rule C in effecting the seizure. Petitioner's objection to the procedure authorized by Rule C is therefore not presented by the facts of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General
WILLIAM F. WELD
Assistant Attorney General
MAURY S. EPNER
Attorney

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